

HOUSE BILL NO. 462

INTRODUCED BY C. SCHRUMPF

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE OF ABORTION FACILITIES; DEFINING AN "ABORTION FACILITY"; PROVIDING FOR A LICENSE FEE; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES FOR THE LICENSURE OF ABORTION FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-201, 50-5-202, AND 50-5-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Abortion" has the meaning provided in 50-20-104.

(2) "Abortion facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

~~(+)(3)~~ "Accreditation" means a designation of approval.

~~(2)(4)~~ "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

~~(3)(5)~~ (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection ~~(3)~~ (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

1 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department
2 rule as disabled.

3 (iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
4 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
5 administration. The term does not include the administration of prescriptive medications.

6 ~~(4)~~(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the
7 geographic area affected by the application, an agency that establishes rates for health care facilities, or a
8 third-party payer who reimburses health care facilities in the area affected by the proposal.

9 ~~(5)~~(7) "Capital expenditure" means:

10 (a) an expenditure made by or on behalf of a health care facility that, under generally accepted
11 accounting principles, is not properly chargeable as an expense of operation and maintenance; or

12 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any
13 other property of value had changed hands.

14 ~~(6)~~(8) "Certificate of need" means a written authorization by the department for a person to proceed with
15 a proposal subject to 50-5-301.

16 ~~(7)~~(9) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation,
17 and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health
18 problems and endangers the health, interpersonal relationships, or economic function of an individual or the
19 public health, welfare, or safety.

20 ~~(8)~~(10) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,
21 radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from
22 the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease
23 or assessment of a medical condition.

24 ~~(9)~~(11) "College of American pathologists" means the organization nationally recognized by that name
25 that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its
26 standards and requirements.

27 ~~(10)~~(12) "Commission on accreditation of rehabilitation facilities" means the organization nationally
28 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status
29 to a rehabilitation facility that it finds meets its standards and requirements.

30 ~~(11)~~(13) "Comparative review" means a joint review of two or more certificate of need applications that

1 are determined by the department to be competitive in that the granting of a certificate of need to one of the
2 applicants would substantially prejudice the department's review of the other applications.

3 ~~(12)~~(14) "Construction" means the physical erection of a health care facility and any stage of the physical
4 erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

5 ~~(13)~~(15) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
6 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to
7 50-5-233.

8 ~~(14)~~(16) "Department" means the department of public health and human services provided for in
9 2-15-2201.

10 ~~(15)~~(17) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney
11 diseases and includes freestanding hemodialysis units.

12 ~~(16)~~(18) "Federal acts" means federal statutes for the construction of health care facilities.

13 ~~(17)~~(19) "Governmental unit" means the state, a state agency, a county, municipality, or political
14 subdivision of the state, or an agency of a political subdivision.

15 ~~(18)~~(20) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
16 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
17 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
18 individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health~~
19 ~~care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical
20 dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance
21 organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term
22 care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient
23 centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

24 (b) Except as provided in [section 5], concerning an abortion facility, the term does not include offices
25 of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including
26 chemical dependency counselors.

27 ~~(19)~~(21) "Health maintenance organization" means a public or private organization that provides or
28 arranges for health care services to enrollees on a prepaid or other financial basis, either directly through
29 provider employees or through contractual or other arrangements with a provider or group of providers.

30 ~~(20)~~(22) "Home health agency" means a public agency or private organization or subdivision of the

1 agency or organization that is engaged in providing home health services to individuals in the places where they
2 live. Home health services must include the services of a licensed registered nurse and at least one other
3 therapeutic service and may include additional support services.

4 ~~(24)~~(23) "Home infusion therapy agency" means a health care facility that provides home infusion
5 therapy services.

6 ~~(22)~~(24) "Home infusion therapy services" means the preparation, administration, or furnishing of
7 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence.
8 The services include an educational component for the patient, the patient's caregiver, or the patient's family
9 member.

10 ~~(23)~~(25) "Hospice" means a coordinated program of home and inpatient health care that provides or
11 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family
12 arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages
13 of illness and dying and that includes formal bereavement programs as an essential component. The term
14 includes:

15 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that
16 meets all medicare certification regulations for freestanding inpatient hospice facilities; and

17 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that
18 can house three or more hospice patients.

19 ~~(24)~~(26) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
20 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
21 Services provided may or may not include obstetrical care, emergency care, or any other service allowed by
22 state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes,
23 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term
24 includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular
25 patients, but does not include critical access hospitals.

26 ~~(25)~~(27) "Infirmery" means a facility located in a university, college, government institution, or industry
27 for the treatment of the sick or injured, with the following subdefinitions:

28 (a) an "infirmery--A" provides outpatient and inpatient care;

29 (b) an "infirmery--B" provides outpatient care only.

30 ~~(26)~~(28) "Intermediate developmental disability care" means the provision of nursing care services,

1 health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102,
2 or for individuals with related problems.

3 ~~(27)~~(29) "Intermediate nursing care" means the provision of nursing care services, health-related
4 services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing
5 care.

6 ~~(28)~~(30) "Joint commission on accreditation of healthcare organizations" means the organization
7 nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation
8 status to a health care facility that it finds meets its standards and requirements.

9 ~~(29)~~(31) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care,
10 residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more
11 individuals or that provides personal care.

12 (b) The term does not include community homes for persons with developmental disabilities licensed
13 under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care
14 facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations
15 providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult
16 correctional facilities operating under the authority of the department of corrections.

17 ~~(30)~~(32) "Medical assistance facility" means a facility that meets both of the following:

18 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
19 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless
20 a longer period is required because transfer to a hospital is precluded because of inclement weather or
21 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction
22 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified,
23 or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and
24 safety of the individual.

25 (b) either is located in a county with fewer than six residents a square mile or is located more than 35
26 road miles from the nearest hospital.

27 ~~(31)~~(33) "Mental health center" means a facility providing services for the prevention or diagnosis of
28 mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
29 combination of these services.

30 ~~(32)~~(34) "Nonprofit health care facility" means a health care facility owned or operated by one or more

1 nonprofit corporations or associations.

2 ~~(33)~~(35) "Offer" means the representation by a health care facility that it can provide specific health
3 services.

4 ~~(34)~~(36) "Outpatient center for primary care" means a facility that provides, under the direction of a
5 licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient
6 center for surgical services.

7 ~~(35)~~(37) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or
8 organization that is specifically designed and operated to provide surgical services to patients not requiring
9 hospitalization and that may include recovery care beds.

10 ~~(36)~~(38) "Patient" means an individual obtaining services, including skilled nursing care, from a health
11 care facility.

12 ~~(37)~~(39) "Person" means an individual, firm, partnership, association, organization, agency, institution,
13 corporation, trust, estate, or governmental unit, whether organized for profit or not.

14 ~~(38)~~(40) "Personal care" means the provision of services and care for residents who need some
15 assistance in performing the activities of daily living.

16 ~~(39)~~(41) "Personal-care facility" means a facility in which personal care is provided for residents in either
17 a category A facility or a category B facility as provided in 50-5-227.

18 ~~(40)~~(42) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24
19 hours by a patient recovering from surgery or other treatment.

20 ~~(41)~~(43) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in
21 the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,
22 psychological and social services, or vocational evaluation and training or any combination of these services
23 and in which the major portion of the services is furnished within the facility.

24 ~~(42)~~(44) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

25 ~~(43)~~(45) "Residential care facility" means an adult day-care center, an adult foster care home, a
26 personal-care facility, or a retirement home.

27 ~~(44)~~(46) "Residential psychiatric care" means active psychiatric treatment provided in a residential
28 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or
29 behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the
30 individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's

1 discharge to less restrictive levels of care at the earliest possible time.

2 ~~(45)(47)~~ "Residential treatment facility" means a facility operated for the primary purpose of providing
3 residential psychiatric care to individuals under 21 years of age.

4 ~~(46)(48)~~ "Retirement home" means a building or buildings in which separate living accommodations are
5 rented or leased to individuals who use those accommodations as their primary residence.

6 ~~(47)(49)~~ "Skilled nursing care" means the provision of nursing care services, health-related services,
7 and social services under the supervision of a licensed registered nurse on a 24-hour basis.

8 ~~(48)(50)~~ "State health care facilities plan" means the plan prepared by the department to project the need
9 for health care facilities within Montana and approved by the governor and a statewide health coordinating
10 council appointed by the director of the department.

11 ~~(49)(51)~~ "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either
12 acute care or extended skilled nursing care to a patient."

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14 **Section 2.** Section 50-5-201, MCA, is amended to read:

15 **"50-5-201. License requirements.** (1) A facility or licensee considering construction of or alteration or
16 addition to a health care facility or an abortion facility shall submit plans and specifications to the department for
17 preliminary inspection and approval prior to commencing construction.

18 (2) A person may not operate a health care facility or an abortion facility unless the facility is licensed
19 by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the
20 person and premises for which it was issued. A license may not be sold, assigned, or transferred.

21 (3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must
22 be returned to the department.

23 (4) Licenses must be displayed in a conspicuous place near the admitting office of the facility."
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25 **Section 3.** Section 50-5-202, MCA, is amended to read:

26 **"50-5-202. License fees.** The department shall collect fees for each license issued for deposit in the
27 state general fund as follows:

28 (1) facilities with 20 beds or less--\$20;

29 (2) facilities with 21 beds or more--\$1 per bed; and

30 (3) abortion facilities, \$500."

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Section 4. Section 50-5-204, MCA, is amended to read:

"50-5-204. Issuance and renewal of licenses -- inspections. (1) After receipt of a new application and notice that the facility is ready to be inspected, the department or its authorized agent shall conduct an initial inspection of the facility within 45 days.

(2) After receipt of an application for renewal of a license, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

(3) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for a period of 1 to 3 years in duration.

(4) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(5) The minimum standards that home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395x(o), as amended, and in rules implementing it that add minimum standards.

(6) The department may inspect a licensed health care facility or abortion facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times."

NEW SECTION. Section 5. Standards for abortion facilities. An abortion facility, other than a hospital, may not provide for the overnight stay of a patient. In addition to the standards adopted under 50-5-103, the department shall adopt rules concerning sanitation, housekeeping, maintenance, staff qualifications, emergency equipment and procedures for emergency care, medical records and reports, procedure and recovery rooms, physical plant, quality assurance, infection control, and information on and access to patient followup care necessary to carry out the purposes of this section.

NEW SECTION. Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 5].

NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2003.

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